

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LEE WELCH,)
vs.)
TUSCALOOSA COUNTY, JIMMY) Civil Action Number
ROBINSON, MIKE HENDERSON and) 00-C-1813-S
LARRY WILBURN,)
Defendants.)

FILED
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U.S. DISTRICT COURT
N.D. OF ALABAMA
JC

ENTERED
NOV 19 2002

**MEMORANDUM OPINION DISMISSING INDIVIDUAL DEFENDANTS and
GRANTING DEFENDANT'S SUMMARY JUDGMENT MOTION SUA SPONTE**

I

For Plaintiff's failure to timely perfect service on individual Defendants JIMMY ROBINSON, LARRY WILBURN, and MIKE HENDERSON, by separate order each of them shall be dismissed, without prejudice. F.R.Civ.P. 4 (m).

II

On its own motion the Court has reconsidered Defendant Tuscaloosa County's Motion for Summary Judgment against the Plaintiff.

The Court had previously granted summary judgment on the racially hostile work environment claim insofar as it is premised on 42 U.S.C. § 2000e *et seq.* ("Title VII"), because Plaintiff did not assert this claim in his charge filed with the Equal Employment Opportunity Commission ("EEOC"). *See Mulhall v. Advance Sac., Inc.*, 19 F.3d 586 (11th Cir.1994). Plaintiff has not asserted a claim against Defendant under 42 U.S.C. § 1983.

Defendant has articulated legitimate, non-discriminatory reasons for its non-selection of Plaintiff for the position of Road Foreman: 1) the job involves frequent contact with the public, and Plaintiff's rape conviction renders him an unsuitable candidate for the position; 2) Plaintiff has been determined to be insubordinate, while neither of the successful candidates have engaged in insubordinate behavior; and 3) Plaintiff has been involved in several on-the-job accidents, and the successful candidate has only been involved in two accidents.

Plaintiff has not shown any of these articulated reasons to be pretextual.

Defendant is therefore entitled to judgment as a matter of law on all of Plaintiff's claims.

By separate order, summary judgment will be granted in favor of Defendant and against Plaintiff.

Done this 18th day of November, 2002.



Chief United States District Judge
U.W. Clemon